

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1162 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 13-11-2-50.5 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 50.5.
- 5 "Degradation", for purposes of IC 13-18-3, means, with respect to a
- 6 National Pollutant Discharge Elimination System permit, the following:
- 7 (1) With respect to an outstanding national resource water, any
- 8 new or increased discharge of a pollutant or a pollutant parameter,
- 9 except for a short term, temporary increase.
- 10 (2) With respect to an outstanding state resource water, ~~or an~~
- 11 ~~exceptional use water~~, any new or increased discharge of a
- 12 pollutant or pollutant parameter that results in a significant
- 13 lowering of water quality for that pollutant or pollutant parameter,
- 14 unless:
- 15 (A) the activity causing the increased discharge:
- 16 (i) results in an overall improvement in water quality in the
- 17 outstanding state resource water; ~~or exceptional use water~~;
- 18 and
- 19 (ii) meets the applicable requirements of 327 IAC 2-1-2(1)
- 20 and (2) and 327 IAC 2-1.5-4(a) and (b); or
- 21 (B) the person proposing the increased discharge undertakes
- 22 or funds a water quality improvement project in accordance
- 23 with ~~IC 13-18-3-2(f)~~ **IC 13-18-3-2(k)** in the watershed of the
- 24 outstanding state resource water ~~or exceptional use water~~ that:
- 25 (i) results in an overall improvement in water quality in the
- 26 outstanding state resource water; ~~or exceptional use water~~;
- 27 and
- 28 (ii) meets the applicable requirements of 327 IAC 2-1-2(1)
- 29 and (2) and 327 IAC 2-1.5-4(a) and (b)."
- 30 SECTION 2. IC 13-11-2-90 IS AMENDED TO READ AS
- 31 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 90. "Governmental

entity", for purposes of **IC 13-18-3** and IC 13-25-6, means the state or a political subdivision.

SECTION 3. IC 13-11-2-149.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 149.5. "Outstanding national resource water", for purposes of section 50.5 of this chapter and IC 13-18-3, means a water designated as such by the general assembly after recommendations by the water pollution control board and the environmental quality service council under **IC 13-18-3-2(n) and IC 13-18-3-2(o).** ~~and IC 13-18-3-2(p).~~ The designation must describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as outstanding national resource waters include water bodies that are recognized as:

(1) important because of protection through official action, such as:

- (A) federal or state law;
- (B) presidential or secretarial action;
- (C) international treaty; or
- (D) interstate compact;

(2) having exceptional recreational significance;

(3) having exceptional ecological significance;

(4) having other special environmental, recreational, or ecological attributes; or

(5) waters with respect to which designation as an outstanding national resource water is reasonably necessary for protection of other water bodies designated as outstanding national resource waters."

Page 1, after line 17, begin a new paragraph and insert:

SECTION 5. IC 13-15-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days:

(1) Three hundred sixty-five (365) days for an application concerning the following:

- (A) A new hazardous waste or solid waste landfill.
- (B) A new hazardous waste or solid waste incinerator.
- (C) A major modification of a solid waste landfill.
- (D) A major modification of a solid waste incinerator.
- (E) A new hazardous waste treatment or storage facility.
- (F) A new Part B permit issued under 40 CFR 270 et seq. for an existing hazardous waste treatment or storage facility.
- (G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.

(2) **Except as provided in IC 13-18-3-2.1**, two hundred seventy (270) days for an application concerning the following:

- 1 (A) A Class 3 modification under 40 CFR 270.42 of a
- 2 hazardous waste treatment or storage facility.
- 3 (B) A major new National Pollutant Discharge Elimination
- 4 System permit.
- 5 (3) **Except as provided in IC 13-18-3-2.1**, one hundred eighty
- 6 (180) days for an application concerning the following:
- 7 (A) A new solid waste processing or recycling facility.
- 8 (B) A minor new National Pollutant Discharge Elimination
- 9 System individual permit.
- 10 (C) A permit concerning the land application of wastewater.
- 11 (4) **Except as provided in IC 13-18-3-2.1**, one hundred fifty
- 12 (150) days for an application concerning a minor new National
- 13 Pollutant Discharge Elimination System general permit.
- 14 (5) One hundred twenty (120) days for an application concerning
- 15 a Class 2 modification under 40 CFR 270.42 to a hazardous waste
- 16 facility.
- 17 (6) Ninety (90) days for an application concerning the following:
- 18 (A) A minor modification to a solid waste landfill or
- 19 incinerator permit.
- 20 (B) A wastewater facility or water facility construction permit.
- 21 (7) The amount of time provided for in rules adopted by the air
- 22 pollution control board for an application concerning the
- 23 following:
- 24 (A) An air pollution construction permit that is subject to 326
- 25 IAC 2-2 and 326 IAC 2-3.
- 26 (B) An air pollution facility construction permit (other than as
- 27 defined in 326 IAC 2-2).
- 28 (C) Registration of an air pollution facility.
- 29 (8) Sixty (60) days for an application concerning the following:
- 30 (A) A Class 1 modification under 40 CFR 270.42 requiring
- 31 prior written approval, to a hazardous waste:
- 32 (i) landfill;
- 33 (ii) incinerator;
- 34 (iii) treatment facility; or
- 35 (iv) storage facility.
- 36 (B) Any other permit not specifically described in this section
- 37 for which the application fee exceeds forty-nine dollars (\$49)
- 38 and for which a time frame has not been established under
- 39 section 3 of this chapter.
- 40 (b) When a person holding a valid permit concerning an activity of
- 41 a continuing nature has made a timely and sufficient application for a
- 42 renewal permit under the rules of one (1) of the boards, the
- 43 commissioner shall approve or deny the application on or before the
- 44 expiration date stated in the permit for which renewal is sought.
- 45 SECTION 6. IC 13-18-2-3 IS AMENDED TO READ AS
- 46 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The
- 47 department shall prepare a list of impaired waters for the purpose of

1 complying with federal regulations implementing Section 303(d) of the
 2 federal Clean Water Act (33 U.S.C. 1313(d)). In determining whether
 3 a water body is impaired, the department shall consider all existing and
 4 readily available water quality data and related information. The
 5 department, before submitting the list to the United States
 6 Environmental Protection Agency, shall:

- 7 (1) publish the list in the Indiana Register;
- 8 (2) make the list available for public comment for at least ninety
- 9 (90) days; and
- 10 (3) present the list to the board.

11 If the United States Environmental Protection Agency changes the list,
 12 the board shall publish the changes in the Indiana Register and conduct
 13 a public hearing within ninety (90) days after receipt of the changes.

14 (b) The board shall adopt by rule the methodology to be used in
 15 identifying waters as impaired. The rule must specify the methodology
 16 and criteria for including and removing waters from the list of impaired
 17 waters.

18 **(c) In the establishment of the total maximum daily load for a**
 19 **surface water under Section 303(d)(1)(C) of the federal Clean**
 20 **Water Act (33 U.S.C. 1313(d)(1)(C)), the department shall, in**
 21 **identifying the surface water under Section 303(d)(1)(A) of the**
 22 **federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)), make every**
 23 **reasonable effort to identify the pollutant or pollutants under**
 24 **consideration for the establishment of the total maximum daily**
 25 **load.**

26 **(d) The department shall comply with subsection (e) if either of**
 27 **the following applies:**

28 **(1) The department:**

29 **(A) is unable in identifying the surface water as described**
 30 **in subsection (c) to identify the pollutant or pollutants**
 31 **under consideration for the establishment of the total**
 32 **maximum daily load; and**

33 **(B) determines, after identifying the surface water as**
 34 **described in subsection (c), that one (1) or more pollutants**
 35 **should be under consideration for establishment of the**
 36 **total maximum daily load.**

37 **(2) The department:**

38 **(A) in identifying the surface water as described in**
 39 **subsection (c), identifies the pollutant or pollutants under**
 40 **consideration for the establishment of the total maximum**
 41 **daily load; and**

42 **(B) determines, after identifying the pollutant or pollutants**
 43 **as described in clause (A), that one (1) or more other**
 44 **pollutants should be under consideration for establishment**
 45 **of the total maximum daily load.**

46 **(e) The department complies with subsection (d) if the**
 47 **department does the following before making a pollutant or**

pollutants the subject of consideration for the establishment of the total maximum daily load:

(1) Determines and demonstrates that the surface water is impaired by the pollutant or pollutants.

(2) Publishes in the Indiana Register the determination referred to in subdivision (1).

(3) Makes the determination referred to in subdivision (1) available for public comment for at least ninety (90) days.

(4) Presents the determination referred to in subdivision (1) to the commissioner for final approval after the comment period under subdivision (3).

SECTION 7. IC 13-18-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

(1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and

(2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.

~~(c) "Exceptional use water" has the meaning set forth in IC 13-11-2-72.5.~~

~~(d)~~ (c) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.

~~(e)~~ (d) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

~~(f)~~ (e) "Watershed" has the meaning set forth in IC 14-8-2-310.

~~(g)~~ (f) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

~~(h)~~ (g) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than

three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

~~(f)~~ **(h)** Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections **(f)** and **(g)**, ~~and (f)~~, including the board's conclusions concerning that information.

~~(f)~~ **(i)** The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

~~(k)~~ **(j)** Notwithstanding any other provision of this section, the designation of an outstanding state resource water in effect on January 1, 2000, remains in effect.

~~(h)~~ **(k)** For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

- (1) prevent degradation; and
- (2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are met.

~~(m)~~ **(l)** The procedures provided by rule under subsection ~~(h)~~ **(k)** must include the following:

- (1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

- (2) Provisions allowing the permittee to choose application of one

(1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water quality in the outstanding state resource water: ~~or exceptional use water:~~

(A) Implementation of a water quality project in the watershed of the outstanding state resource water ~~or the exceptional use water~~ that will result in an overall improvement of the water quality of the outstanding state resource water. ~~or the exceptional use water:~~

(B) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000), based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter **for use as permitted under that section.**

(3) Criteria for the submission and timely approval of projects described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water. ~~or exceptional use water.~~

~~(n)~~ **(m)** For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

~~(o)~~ **(n)** A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality service council.

~~(p)~~ **(o)** Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

(p) This subsection applies to all surface waters of the state. The department shall complete an antidegradation review and modification, if necessary, of the rules of the board that authorize NPDES general permits. After an antidegradation review of a rule is conducted under this subsection, activities covered by an NPDES general permit authorized by that rule are not required to undergo an additional antidegradation review.

(q) Subject to subsection (r), the commissioner shall consider the following factors in determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures:

(1) Creation, expansion, or maintenance of employment.

(2) Reduction of the unemployment rate.

- (3) Increase of median household income.**
- (4) Reduction of the number of households below the poverty level.**
- (5) Increase of the supply of needed housing.**
- (6) Growth in population.**
- (7) Increase of the community tax base.**
- (8) Provision of fire departments, schools, infrastructure, and other necessary public services.**
- (9) Correction of a public health, safety, or environmental problem.**
- (10) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.**
- (11) Improvement of the quality of life for residents in the area.**
- (12) Promotion of the fishing, recreation, and tourism industries.**
- (13) Enhancement of threatened and endangered species.**
- (14) Maintenance of economic competitiveness.**
- (15) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (1) through (13) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.**
- (16) Inclusion by the applicant of additional factors that may enhance the social or economic necessity associated with the proposed discharge, such as an approval that:**
 - (A) recognizes social or economic necessity; and**
 - (B) is given to the applicant by:**
 - (i) a legislative body; or**
 - (ii) other government officials.**
- (17) Any other action or recommendation relevant to the antidegradation demonstration made by a:**
 - (A) state;**
 - (B) county;**
 - (C) township; or**
 - (D) municipality;**

potentially affected by the proposed discharge.
- (r) In determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, the commissioner:**
 - (1) must give substantial weight to any applicable determinations by governmental entities; and**
 - (2) may rely on consideration of any one (1) or a combination of the factors listed in subsection (q).**
- (s) Each exceptional use water (as defined in IC 13-11-2-72.5, before its repeal) designated by the board before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by**

operation of law.

(t) Beginning June 1, 2009, all waters of the state are regulated as one (1) of the following categories:

(1) Outstanding national resource waters.

(2) Outstanding state resource waters.

(3) Waters of the state as described in 327 IAC 2-1-2(1), as in effect on January 1, 2009.

(4) High quality waters as described in 327 IAC 2-1-2(2), as in effect on January 1, 2009.

(5) Waters of the state as described in 327 IAC 2-1.5-4(a), as in effect on January 1, 2009.

(6) High quality waters as described in 327 IAC 2-1.5-4(b), as in effect on January 1, 2009.

SECTION 8. IC 13-18-3-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.1. (a) If a discharge results from an activity for which an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4) is sought, the deadline for the department to adopt antidegradation standards and implementation procedures under 40 CFR 131.12 and 40 CFR Part 132, Appendix E with respect to the discharge is the deadline for the commissioner to approve or deny the NPDES permit application under IC 13-15-4-1.

(b) The commissioner may extend for cause for not more than ninety (90) days the deadline under subsection (a) for the department to adopt antidegradation standards and implementation procedures.

SECTION 9. IC 13-18-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The outstanding state resource water improvement fund is established. All money collected under section 2 of this chapter and any money accruing to the fund are continuously appropriated to the fund to carry out the purposes of section 2 of this chapter. Money in the fund at the end of a state fiscal year does not revert to the state general fund, unless the outstanding state resource water improvement fund is abolished.

(b) The outstanding state resource water improvement fund shall be administered as follows:

(1) The fund may be used by the department of environmental management to fund projects that will lead to overall improvement to the water quality of the affected ~~exceptional use water or~~ outstanding state resource water.

(2) The treasurer of state may invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(3) Any interest received accrues to the fund.

(4) The expenses of administering the fund shall be paid from the fund."

- 1 Page 2, after line 33, begin a new paragraph and insert:
- 2 SECTION 11. IC 13-11-2-72.5 IS REPEALED [EFFECTIVE JUNE
- 3 1, 2009].
- 4 SECTION 12. **An emergency is declared for this act."**
- 5 Renumber all SECTIONS consecutively.
(Reference is to EHB 1162 as printed March 25, 2009.)

Senator GARD